

REMARKS

I. Status of the Claims

Claims 1-7 and 9-21 are pending. All of the claims have been amended; claim 8 has been cancelled; and claims 18-21 have been added. Reconsideration of the outstanding rejections and objections is respectfully requested in view of the foregoing amendment and in light of these remarks.

II. Amendments to the Specification

An Abstract and Headings have been added as suggested by the Examiner.

A reference to the priority application has also been added. The Abstract is taken from the published international application. No new matter has been added.

A reference to a prior art document has been corrected at page 1. Patent EP 0 357 841 is correctly referenced at page 5, lines 33-34, and the document that was originally referenced at page 1 does not have a Figure 6. Applicants submit the correction is a clerical error, and that the correction thereof is not new matter.

Page 9 has been amended so that the double use of reference numeral 34 is avoided. In Fig. 6, reference numeral 34 designates two different elements, i.e. the wheels at the end of the apparatus and a spotting member. To correct this error, applicants respectfully request that element 35 be added to Figure 6, and to the description on page 9.

This correction is obvious as it allows two different elements to be distinguished. Further, in Fig. 6, wheels 34 – the function of which is described at page 9, lines 11-15 of the disclosure – are clearly recognizable and distinguished from the spotting member that cooperates

with a read mark 36. Applicants submit that the correction is an obvious error similar to the type described in M.P.E.P. 1302.04, and that the correction should be entered.

In view of the corrections in the specification, including the Amended Sheets added during the international phase, the Examiner may wish to require a substitute specification.

III. Amendment to the Drawings

Figure 6 has been amended to avoid the double use of reference numeral 34 (as discussed in Section II above). A replacement sheet for Figure 6 is attached hereto as an Appendix. Entry thereof is respectfully requested.

IV. Rejections Under 35 U.S.C. § 112, Second Paragraph

The amended claims are believed to overcome the rejections under section 112. Specifically, an alleged lack of antecedent basis (caused by the pronoun “it” and the phrase “the adjoining line”) has been addressed. An alleged problem of indefinite scope (caused by the use of words “preferably” and “particularly”) has likewise been addressed.

The improper multiple dependencies in the claims have been corrected to overcome the objection to the claims set forth in paragraph 3 of the Office Action.

V. Rejections Under 35 U.S.C. § 102

Claims 1-2, 4-9, 11, 13, and 15-17 have been rejected under 35 U.S.C. § 102(a) as allegedly being anticipated by U.S. Patent No. 4,658,963 (Jud). Claims 1-4, 7, and 11-17 have been rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by U.S. Patent No. 4,290,526 (Haiss). Claims 1-4, 7-13, and 15-17 have been rejected under 35 U.S.C. § 102(e) as allegedly

being anticipated by U.S. Patent No. 5,934,809 (Marbler). Applicants respectfully traverse each of these rejections and request reconsideration in view of these remarks.

Claim 1 recites the use of gas in packaging to facilitate opening as follows:

so that a consumer can grasp the item in such a way as to compress the item so as to increase the pressure of the gas to such a point that bending the item causes the film to rupture instantaneously along the most part of the precut line.

Independent claims 15 and 17 have substantially similar language.

This element is not taught or suggested by any of the prior art references.

In fact, the packaging of the prior art are opened in a conventional manner by applying mechanical stress on the packaging film either by pulling on each side of the packaging so as to rupture the line of weakness; or via a snap-off action of the product acting against the packaging.

For example, Marbler, at col. 4, line 66 to col 5, line 2 describes that “the chocolate bar “serves as the means for snapping the pouch open”. Jud, at col. 3, lines 30-50, describes an opening by snapping and tearing, and does not teach the element recited in the present claims, that the gas pressure inside packaging reaches “a point that bending the item causes the film to rupture.” Haiss, likewise, at col. 2, lines 47-49 describes a package opened by tearing open a flap.

In contrast, in the claimed invention, there is an increase of gas pressure inside the packaging due to the manipulation by the consumer and that facilitates opening. See page 6, line 14 to page 7, line 26. None of the prior art discloses, expressly or implicitly, that an amount of gas can be provided in the packaging so as to obtain the claimed effect.

The Examiner contends in paragraph 12 of the Office Action that Figure 2 of Jud teaches a film enclosing a product and an amount of gas. However, it is clear from inspection that

the amount of gas, if any, enclosed in the packaging film in Jud does not meet the criteria for the amount of gas set forth in claim 1. Applicants moreover do not agree that Jud, column 2, lines 45-61 teaches shaping the film in the manner claimed. Without wishing to limit the claimed “shaping” to preferred embodiments described in the specification, the Examiner is invited to compare the folding shown in the Jud with the shaping described in the present specification at the paragraph bridging pages 8-9, for a better understanding of the limitation in claim 19, for example.

The Examiner similarly contends in paragraph 13 of the Office Action that Haiss discloses a quantity of gas in the packaging. However, no explicit mention of gas within the packaging is mentioned in Haiss. Haiss does not suggest, for example, that pressure is increased in the packaging when the item is gripped which thereby facilitates opening.

Substantially the same remarks can be made with respect to Marbler, and with respect to the prior art that was cited by the Examiner but not applied. None of the prior art references, alone or in combination, teach a packaging with a quantity of gas enclosed in the film which facilitates opening in the manner claimed. Reconsideration and withdrawal of the pending prior art rejections are therefore respectfully requested.

VI. Information Disclosure Statement


An Information Disclosure Statement citing the references found in the International Search Report and the documents cited in the specification is being submitted concurrently herewith. Consideration is respectfully requested

CONCLUSION

Applicants respectfully submit that each of the objections and rejections raised in the October 14, 2004 Office Action have been addressed, and that the application is in condition for allowance.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should be directed to our below listed address.

Respectfully submitted,



Raymond R. Mandra
Attorney for Applicants

Registration No. 34,382

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200

NY_MAIN 406811v1